

IN THE COURT OF 6TH M.A.C.T , KHURDA.

Present:

Sri A.K.Sahoo, LL.M.,
Member 6th M.A.C.T, Khurda.

M.A.C.T NO15/66 of 2013/09

1. Subash Parida, aged about 37 years, S/o Bhikari Parida
Vill. Rasulpur (Ujulagopinathpur), P.S.Tangi, Dist. Khurda.

..... Applicant.

Vrs.

1. Smt. Namita Kumar Panda, W/o Niranjana Panigrahi,
At. Jemadei Peth Street, P.O/P.S. Berhampur, Dist. Ganjam

.....O.P No.1

2. United India Insurance Co. Ltd. Berhampur branch
Divisional Manager, Bhubaneswar Division, At-794

Saheednagar, Bhubaneswar. Dist. Khurda. **.....O.P No.2**

Counsel for the applicant: Sri B.Paltasingh

Counsel for O.P No.1 : Sri P.K.Mangaraj, Adv.

Counsel for the O.P No.2: Sri Sarbeswar Sahu, Adv.

Date of argument : 18.7.14

Date of Judgment: 30.7.14

J U D G M E N T

Applicant Subash Parida has filed application U/s.166 M.V.Act claiming award of Rs. 1,20,000/- for the injury suffered by him in a vehicular accident committed on 3.3.07 at 4 p.m near a Dhaba on N.H-5 from Opp.party no.1 the owner of the offending vehicle a car bearing Regd No. OR07N6572 as well as from the Insurer United India Insurance Company Ltd opp.party no.2.

2. On 3.3.07 while the claimant was proceeding towards Chandpur from Ugratara side by riding a Herohonda motorcycle bearing regd No. OR02AC 1720 with pillion rider Duryodhan Champati, the offending vehicle came from Khurda side towards Balugaon i.e behind the motorcycle being driven at high speed without applying horn in rash and negligent manner , for which the driver lost control over the vehicle and the vehicle moved to the left extremity of the road and dashed against the motorcycle with violent force, as a result of which the applicant alongwith the pillion rider were thrown to a distance. The applicant suffered fatal injuries and was taken to U.G.P.H.C, Tangi, where after preliminary treatment he was referred to Capital hospital, Bhubaneswar, thereafter for better treatment he was admitted in a private hospital at Bhubaneswar. For such incident a criminal case was registered at Banpur P.S against the driver of the offending vehicle and after completion of investigation police has submitted charge-sheet U/s. 279, 337 I.P.C against the driver of the offending vehicle. The applicant claims that he was 37 years old and earning his livelihood as a driver of a truck and getting salary of Rs.6000/- per month, but after the accident he was confined to bed for six months and has become partially disabled , loosing his earning capacity. He claims to have spent Rs. 40,000/- for treatment and claims Rs. 1,20,000/- as award.

3. Opp.party no.1 the owner of the vehicle filed her W.S submitting that the accused driver Sanatan Jena has a valid license from 7.8.02 till 6.8.22 and the vehicle was insured with opp.party no.2 and valid from 10.1.07 till 9.1.08. Further that the applicant is solely responsible for the accident, if any and that the compensation, if any to be paid by opp.party no.2.

4. Opp.party no.2 filed its W.S traversing all the allegation made by the claimant concerning the incident and has put the burden of the same on the applicant. Further opp.party no.2 denies the alleged injuries mentioned in Col.2 and place of treatment in Col.2 of the claim petition and also challenges the compensation claimed.

5. On such pleadings of both parties following issues have been framed.

ISSUES

1. Whether the claim of the petitioner is maintainable?
2. Whether the injuries of the applicant Subash Parida caused on account of Motor vehicle accident involving vehicle bearing Regd No. OR-02-AC-1720(Hero Honda Motor cycle and OR-07N-6572 (Indica Car)?
3. Whether the accident took place due to rash and negligent driving of the driver of the offending vehicle bearing Regd No. OR- 07N-6572(Indica Car), resulting multiple fatal injuries of the applicant?

4. Whether the driver of the offending vehicle was having valid driving license and whether the said vehicle was validly insured by the date of the accident?
5. Whether the petitioner is entitled to get the compensation? If so, from which O.P & to what extent to the compensation amount ?
6. **Issue No.2 and 3** :- Those issues being inter-related are taken together for adjudication. The petitioner has examined himself and has relied on the documents of Ranpur P.S.Case No. 33 dtd. 4.3.07 registered as G.R.Case in the court of learned J.M.F.C, Ranpur. Ext.1 is the certified copy of F.I.R in such case Ext.2, the charge-sheet in such case indicates that on completion of investigation charge-sheet has been submitted against the accused driver Sanatan Jena for committing offence U/s.279, 337 I.P.C. The injury report vide Ext.3 indicates that Su;bash Parida had sustained incised looking lacerated wound of size 2” x half c.m x bone deep over left fore arm bleeding and another incised looking lacerated 1” x 1/ 2 c.m x bone deep over occipital area bleeding respectively, which are simple in nature. The petitioner has filed documents like discharge summery of a private hospital vide Ext.4. Prescription of the private hospital vide Ext.5 and some money receipt to substantiate he has spent Rs. 40,000/-. The petitioner claims to have been hospitalised in a private hospital and suffered for six months. The claimant says that he was working as a driver of a truck for 12 years and obtained the D.L 10-12 years back. Learned advocate for opp.party no.2 challenges that the D.L Ext.7 was not obtained 10-12 years back, but has been manufactured for this case and that it does not authorise the claimant to drive heavy vehicle. Admittedly neither any document is filed

for claimant is a driver, nor the owner of the truck has been examined, nor that he was getting salary of Rs. 6,500/- per month. He admits that on the next day he was discharged from the private hospital i.e Kara hospital, at Bhubaneswar. No document that still the claimant is under treatment has been filed. At the same time, it is clear from the charge-sheet against the driver of the offending vehicle that, he was driving the car in rash and negligent manner causing such accident, for which the claimant had sustained two injuries. Such fact establishes that the accident took place due to rash and negligent driving of the driver of the offending vehicle bearing Regd No. OR 07N 6572 causing 2 injuries to the claimant. Accordingly issue no.2 and 3 are answered in favour of the applicant.

7. **Issue No.1 and 4 :-** The charge-sheet vide Ext.2 indicates that the D.L bearing No. 6982/02 of the accused driver was valid till 6.8.22. Further it indicates that the offending vehicle was insured vide policy No. 034500/31/06/01,00004049 valid up to 9.1.08. Therefore, opp.party no.2 the insurer is liable to pay the award. The claimant Subash Parida has filed the claim petition relying on such documents. Findings on issue nos. 2 and 3 and such facts establishes that the claim petition is maintainable and the driver of the offending vehicle was having valid D.L and the vehicle was validly insured with opp.party no.2 on the date of accident.

8. **Issue No.5:-** The injury report vide Ext.3 indicates that the injured Subash Parida had sustained two incised looking lacerated wound of size 1” x half c.m x bone deep over occipital area with bleeding and 2” x half c.m x bone deep over left fore arm with bleeding respectively, which are simple in nature. The petitioner claims to have been examined in a private clinic and has spent Rs. 40,000/- for it. The documents filed does not inspire

confidence to believe it. However the M.R and the medicine bills file comes to Rs. 1,410/-. The accident had taken place on 3.3.07 and the bills relates to dtd. 3.3.07 as well as 4.3.07. Filing the driving license claims that for the accident he could perform duty as driver of a truck getting salary of Rs. 6000/- per month for six month for sustaining sever head injury. No documents in support of it has been filed. The facts remains that the claimant petitioner had sustained injury on his head due to vehicular accident, for which must have suffered pain and mental agony. Relying on the case Baikuntha Kumar Bhatia Vrs. The Orissa State Road Transport Corporation, reported in 1987 (2) T.A.C 194, it is contended that

“In assessing compensation for pain, suffering and discomfort that the injured might have and be passing through especially in case of a persistent injury—where the injury is not fully cured and continues to give pain and suffering—the Tribunal should not have been tight fisted. It should have put itself in the place of the injured and then appreciate what amount would be the adequate compensation”. Therefore, the nature of injury if caused or not and pain and suffering for the injury are relevant facts to determine award.

Taking into account of facts of the present case and just award is to be given to the applicant, I am of considered view that he is entitled to Rs. 10,000/- for the pain and mental agony and Rs. 6000/- for loss of income for being not able to walk for one month and Rs. 4000/- for the medical treatment and anciliary expenses. Accordingly the petitioner is entitled to Rs. 20,000/- with interest @ 7% of P.I and F.I from the date of filing of the case till the amount is to be paid by opp.party no.2.

AWARD

The claim petition is accordingly allowed on contest with cost of Rs.1000/- against opp.party no.2 and without contest against opp.party no.1. The total compensation amount determined at Rs. 20,000/- shall carry simple interest @ 7% pendent lite and future from the date of filing of the claim petition on 23.9.09 till date of actual payment. O.P No.2 to make payment within three months hence.

Member, 6th M.A.C.T, Khurda.

Judgment is transcribed to my dictation, corrected, sealed and signed by me and pronounced in the open court this the 30th June, 2014.

Member, 6th M.A.C.T, Khurda.

List of witnesses examined on behalf of applicant.

P.w.1 Subash Parida.

List of witnesses examined on behalf of Opp.party No.2

N i l.

List of documents marked for Exhibits for applicant.

Ext.1	Certified copy of F.I.R
Ext.2	Certified copy of charge-sheet
Ext.3	Certified copy of Injury report.
Ext.4	Discharge summary certificate
Ext.5	Original prescription issued by Kar Clinic.
Ext.6	Photo copy of Insurance policy of the offending vehicle.

List of documents marked for Exhibits for Opp.party No.2

N i l.

Member, 6th M.A.C.T, Khurda.